

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:07CR418
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
DILLON M. KRIVOHAVEK,)	
)	
Defendant.)	

The Court has received the Presentence Investigation Report ("PSR") and the Defendant's objections thereto (Filing No. 74). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The plea agreement states that no enhancements under U.S.S.G. § 2K2.1(b) should apply. The PSR includes an enhancement under § 2K2.1(b)(1)(A). Accordingly, the Defendant objects to ¶¶ 21 and 28. The objection is granted, and the plea agreement will be upheld.

The Defendant also objects to the 2 criminal history points assessed in ¶ 40. The objection is denied for the reasons stated in the Addendum to the PSR.

The Defendant moves for a downward departure or deviation from the guidelines based on overstatement of the Defendant's criminal history. The motion will be heard at sentencing.

IT IS ORDERED:

1. The Defendant's Objections to the Presentence Investigation Report (Filing No. 74) are granted as to ¶¶ 21 and 28 and denied as to ¶ 40;

2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final;

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and

6. The Defendant's motion for downward departure or deviation (Filing No. 74) will be heard at sentencing.

DATED this 1st day of December, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge